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The 10 Worst Regulations of 2013

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The year 2013 will be remembered for many things, not least the miles of red tape that were imposed on Americans. It has been a very busy year for regulators, who imposed new dictates on everything from the food people eat to the loans they obtain and the health insurance they buy (or lose).

Which are the worst new rules? There are so many choices, and there is no objective measurement, but here is our take on the bottom 10:

10. **Red tape on the Christmas tree: USDA Mandatory Promotion Programs.** In its latest version of the $1 trillion farm bill, the House approved a provision that requires the U.S. Department of Agriculture (USDA) to impose a mandatory assessment (read: a tax) of 15 cents on every fresh Christmas tree for the purpose of funding a promotional campaign for the industry. (Why, of course, this is utterly necessary—the Christmas tree industry has such a terrible reputation!) This is the same program that the USDA wanted to impose in 2011 until a public outcry derailed its plans.[1]

9. **Ignorance is bliss? FDA restrictions on in-home genetic testing.** In early December, the Food and Drug Administration (FDA) ordered a company called "23andMe" to stop marketing its home genetic testing kits. There was nothing unsafe about the product; the FDA simply argues that the tests might not be accurate and will prompt other, unnecessary medical testing. Surely that is a decision Americans should be allowed to make themselves. The government should not be in the business of keeping Americans in the dark about their own genes.

8. **Lost in the mail: postal mandates.** The U.S. Postal Service (USPS) is hardly known for its efficiency. Part of the reason is that this government-owned enterprise is heavily regulated by Congress. Thus, attempts to close unneeded facilities and reduce delivery days have routinely been blocked by legislators. Most recently, USPS plans to move to five-day-per-week delivery were scotched by congressional rules. No wonder the operation is losing loads of money and putting taxpayers at risk.[2]

7. **Simmering restrictions: Boiler MACT.** Augmenting its war on energy, the Obama Administration on January 31 finalized the so-called Boiler MACT (maximum achievable control technology), a punishing set of regulations governing emissions of mercury, dioxin, particulate matter, hydrogen chloride, and carbon monoxide from some 17,000 boilers nationwide that are used to generate electricity or provide heat for factories. The Environmental Protection

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Agency (EPA) estimated the up-front costs of the rule at nearly $5 billion, although this is disputed as absurdly low by those who are affected. Whatever the true cost, the enormity of the rule prompted the Administration to hold back the regulations until after the 2012 election.[3]

6. **Class warfare: SEC rules on executive pay.** The Securities and Exchange Commission (SEC) on September 18 proposed a requirement that public companies disclose the ratio of CEO compensation to the median earnings of all employees. The agency had no real choice in the matter. The rule was among several dictates in the Dodd–Frank act that have no purpose other than to stoke populist anger about wage "inequality." The inanity of the regulation is exacerbated by the difficulty in calculating median earnings for myriad employee groups that cannot be compared with any statistical credibility.

5. **Social cost inflation: valuing carbon.** The Energy Department in May finalized a rule limiting the energy that microwave ovens may consume. Such rules are nothing new for the department, but in its benefit-cost analysis justifying the rule, the regulators vastly increased the value of reducing carbon emissions—by a whopping 50 percent. This bloated number allowed not only greater regulation of microwaves, but also tighter rules on *any* carbon emissions *anywhere*. The EPA generates this figure using faulty models that are useless policy tools. Heritage has found that reasonable alternative assumptions significantly lower the value of carbon reduction.[4] Widespread protests over regulators' gimmickry forced the Administration to review its estimate, but no final decision has been reached.[5]

4. **Transcendent regulation: banning trans fats.** Consumption of trans fats declined a whopping 78 percent in recent years—to about 1 gram per day—as food manufacturers reformulated products based on consumer demand. Alas, the diet dictators at the FDA want to ban trans fats entirely under the absurd notion that *any* ingestion of *any* amount is inherently dangerous. The action reeks of regulatory mission creep: that is, moving from banning dangerous ingredients to banning ingredients that the government regards as less preferable than alternatives. To that end, the agency on November 8 issued a "tentative determination" that trans fats in processed foods are not "generally recognized as safe." The FDA estimates the initial cost of the ban to be about $8 billion.[6]

3. **The CFPB's war on mortgages.** The new Consumer Financial Protection Bureau (CFPB) went into high gear this year, among other things issuing hundreds of pages of new rules restricting mortgage writing: the so-called Ability-to-Repay and Qualified Mortgage regulations released on January 30. Virtually every aspect of financing a home—including mortgage options, eligibility standards, and even the structure and schedule of payments—will be governed by regulations peddled as preventing another collapse of the housing market. In fact, the new regime is based on faulty notions about the causes of the crash. Consequently, the

1. Daren Bakst, "Obama's Christmas Tree Tax Is Back," The Heritage Foundation, The Foundry, June 4, 2013, http://blog.heritage.org/2013/06/04/obamas-christmas-tree-tax-is-back/.
2. See James L. Gattuso, "Can the Postal Service Have a Future?" Heritage Foundation *Backgrounder* No. 2848, October 10, 2013, http://www.heritage.org/research/reports/2013/10/can-the-postal-service-have-a-future.
3. Diane Katz, "Pulling the Plug on Obama's Energy Scheme," The Heritage Foundation, The Foundry, June 15, 2012, http://blog.heritage.org/2012/06/15/pulling-the-plug-on-obamas-energy-scheme/.
4. Kevin D. Dayaratna and David W. Kreutzer, "Loaded DICE: An EPA Model Not Ready for the Big Game," Heritage Foundation *Backgrounder* No. 2860, November 21, 2013, http://www.heritage.org/research/reports/2013/11/loaded-dice-an-epa-model-not-ready-for-the-big-game.
5. David Kreutzer and Katie Tubb, "Carbon (And Practically Everything Else) Just Got More Expensive," The Heritage Foundation, The Foundry, June 13, 2013, http://blog.heritage.org/2013/06/13/carbon-just-got-more-expensive/.
6. Daren Bakst, "FDA's Proposed Trans Fat Ban Is a Power Grab to Control Lives," Heritage Foundation *Commentary*, November 18, 2013, http://www.heritage.org/research/commentary/2013/11/fdas-proposed-trans-fat-ban-is-a-power-grab-to-control-lives.

government will unnecessarily limit financing options and access to credit—and thus further expand control of Americans' lives.[7]

2. **Full employment for lawyers: the Volcker Rule.** This 900-plus-page rule, adopted by five separate regulatory agencies in early December, limits banks' "proprietary" trading, meaning trades on their own account rather than on behalf of clients. Championed by former Fed chairman Paul Volcker, the rule was a last-minute addition to the 2010 Dodd–Frank law. For three years, the rule was stalled as regulators tried to separate undesirable speculation from economically essential investment. It is still doubtful they got it right. What the rule does do, as *The Wall Street Journal* put it, is to create a "limitless supply of ambiguity"—a boon for lawyers, not for consumers.[8]

1. **You can't keep it: the "essential" health benefits mandate.** Finalized early in 2013, these rules—a key part of the Obamacare health insurance scheme—imposed coverage requirements for individual health insurance policies. Required services for all policies range from maternity care (regardless of gender) to substance-abuse treatment to pediatric care (including for the childless). In practice, this mandate turned out to be the regulatory equivalent of New Coke, causing millions of Americans to lose their insurance policies, despite presidential assurances that "if you like your plan, you can keep your plan."[9]

As active as regulators were in 2013, there is no reason to believe they will slow down in 2014. Already in the pipeline are dozens of new rules covering health care, finance, global warming, and more. It is anybody's guess which will be on the 2014 list. The only safe bet is that consumers will lose even more choices and all Americans will emerge with even less freedom.

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7. Diane Katz, "Dodd–Frank Mortgage Rules Unleash Predatory Regulators," Heritage Foundation *Backgrounder* No. 2877, December 16, 2013, http://www.heritage.org/research/reports/2013/12/doddfrank-mortgage-rules-unleash-predatory-regulators.
8. "The Volcker Ambiguity," *The Wall Street Journal*, December 11, 2013, http://online.wsj.com/news/articles/SB10001424052702304744304579250393935144268.
9. Edmund F. Haislmaier and Alyene Senger, "Obamacare's Essential Benefits Regulation Creates Disparities Among States," Heritage Foundation *Issue Brief* No. 3907, April 10, 2013, http://www.heritage.org/research/reports/2013/04/obamacare-s-essential-benefits-regulation-creates-disparities-among-states.